Nos. 01-1118, 01-1119

In the Supreme Court of the United States

SEP 17 2002

JOSEPH SCHEIDLER, ET AL., *Petitioners,*

v.

NATIONAL ORGANIZATION FOR WOMEN, INC., ET AL.

OPERATION RESCUE, *Petitioner,*

v.

NATIONAL ORGANIZATION FOR WOMEN, INC., ET AL.

On Writs Of Certiorari To The United States Court Of Appeals For The Seventh Circuit

BRIEF FOR THE STATES OF CALIFORNIA, NEW YORK, CONNECTICUT, MARYLAND, MASSACHUSETTS, MONTANA, NEVADA, WASHINGTON AND WEST VIRGINIA, AS *AMICI CURIAE*, IN SUPPORT OF RESPONDENTS

BILL LOCKYER,
Attorney General
MANUEL M. MEDEIROS
Solicitor General
RICHARD M. FRANK
Chief Assistant Attorney General
MARY E. HACKENBRACHT
Senior Assistant Attorney General

HELEN G. ARENS*
Deputy Attorney General
California Department of Justice
300 South Spring Street, Suite 500
Los Angeles, California 90013-1230
(213) 897-2607

ELIOT SPITZER,
Attorney General
CAITLIN J. HALLIGAN
Solicitor General
DANIEL J. CHEPAITIS
Assistant Solicitor General
State of New York
Office of the Attorney General
120 Broadway
New York, New York 10271-0332
(212) 416-8025

* *Counsel of Record*

(Additional Counsel Listed Inside Front Cover)

COCKLE LAW BRIEF PRINTING CO. (800) 225-6964
OR CALL COLLECT (402) 342-2831

Additional Counsel for *Amici Curiae*

RICHARD BLUMENTHAL
Attorney General
Of Connecticut
55 Elm Street
Hartford, CT 06141-0120
(860) 808-5318

J. JOSEPH CURRAN, JR.
Attorney General
Of Maryland
200 St. Paul Place
Baltimore, MD 21202
(410) 576-6300

THOMAS F. REILLY
Attorney General
Of Massachusetts
1 Ashburton Place
Boston, MA 02108-1698
(617) 727-2200

MIKE MCGRATH
Attorney General
Of Montana
215 N. Sanders
P.O. Box 201401
Helena, MT 59620-1401
(406) 444-2026

FRANKIE SUE DEL PAPA
Attorney General
Of Nevada
100 N. Carson Street
Carson City, NV 89701-4717
(775) 684-1100

CHRISTINE O. GREGOIRE
Attorney General
Of Washington
1125 Washington Street, SE
P.O. Box 40100
Olympia, WA 98504-0100
(360) 753-6200

DARRELL V. MCGRAW, JR.
Attorney General
Of West Virginia
State Capitol, Room 26-E
Charleston, WV 25305
(304) 558-2021

QUESTIONS PRESENTED

1. Whether a person's wrongful use of violence, force or fear to induce medical clinics and their staffs to cease providing services and patients to abandon contractual relationships with the clinics constitutes extortion under the Hobbs Act, 18 U.S.C. § 1951.

2. Whether private litigants may obtain permanent injunctive relief in a Racketeer Influenced and Corrupt Organizations Act (RICO) civil action under 18 U.S.C. § 1964(c).

TABLE OF CONTENTS

	Page
Questions Presented	i
Table of Contents	ii
Table of Authorities	iv
Statement of Interest of *Amici Curiae*	1
Summary of Argument	1
Argument	2
I. Petitioners Committed Hobbs Act Extortion	2
A. Petitioners Were Properly Found Liable For "Obtaining Property" As Defined In The Hobbs Act	3
B. Mere Trespassory Interferences With Property Rights And Protest Activities Do Not Amount To Extortion	7
1. Mere Acts Of Trespass Or Violence Do Not Constitute Extortion	8
2. The Hobbs Act Cannot Be Applied To Chill Protest Activities	10
C. The New York Antecedents To The Hobbs Act Support Its Application To Petitioners' Conduct	12
1. The Term "Property," As Used In The New York Antecedents, Was Read Broadly, Not Narrowly	13
2. The Prohibition On Coercion Under New York Law Does Not Aid Petitioners	16

TABLE OF CONTENTS – Continued

Page

D. The Hobbs Act Cannot Be Applied To Misuses Of Governmental Regulatory Power, Unless Government Officials Seek Personal Gain 18

II. RICO Authorizes Permanent Injunctions In Private RICO Actions..... 19

A. Private Injunctions Are Available Under A Plain Reading Of 18 U.S.C. § 1964..... 19

B. The Availability Of Private Injunctions Serves The Purposes Of RICO..... 22

C. The Legislative History Of § 1964 Is Consistent With Recognition Of Private Injunctive Relief..... 24

D. Comparison With The Antitrust Laws Does Not Support The Contention That Congress Intended To Foreclose Injunctions In Private RICO Actions..... 26

E. Public Policy Considerations Support The Availability Of Injunctions In Private Civil RICO Actions 28

Conclusion..... 30

TABLE OF AUTHORITIES

Page

CASES:

Agency Holding Corp. v. Malley-Duff & Associates, Inc., 483 U.S. 143 (1987) 25, 26

Barnhart v. Sigmon Coal Co., 534 U.S. 438, 122 S.Ct. 941 (2002) 25

California v. American Stores Co., 495 U.S. 271 (1990) 23, 26

Carpenter v. United States, 484 U.S. 19 (1987) 6, 7

Central Bank of Denver, N.A. v. First Interstate Bank of Denver, N.A., 511 U.S. 164 (1994) 25

Cleveland v. United States, 531 U.S. 12 (2000) 18, 19

Consumer Product Safety Comm'n v. GTE Sylvania Inc., 447 U.S. 102 (1980) 19

Crane v. Commissioner, 331 U.S. 1 (1947) 4

Debartolo Corp. v. Fla. Gulf Coast Building & Constr. Trades Council, 485 U.S. 568 (1988) 10

Enmons v. United States, 410 U.S. 396 (1973) 7

Equitable Life Assurance Soc'y v. Brennan, 148 N.Y. 661 (1896) 5

Evans v. United States, 504 U.S. 255 (1992) 12

Goldblatt v. Hempstead, 369 U.S. 590 (1962) 4

Hadacheck v. Sebastian, 239 U.S. 394 (1915) 4

Lucas v. South Carolina Coastal Council, 505 U.S. 1003 (1992) 4

McNally v. United States, 483 U.S. 350 (1987) 6, 7

Minnesota v. Northern Sec. Co., 194 U.S. 48 (1904) 26, 27

TABLE OF AUTHORITIES – Continued

Page

Mugler v. Kansas, 123 U.S. 623 (1887) 4

NAACP v. Claiborne Hardware Co., 458 U.S. 886 (1982) 11, 12

National Organization for Women v. Scheidler, 510 U.S. 249 (1994) 25

National Organization for Women v. Scheidler, 968 F.2d 612 (7th Cir. 1992), *rev'd*, 510 U.S. 249 (1994) 29

Penn Central Transportation Co. v. New York City, 438 U.S. 104 (1978) 7

People ex rel. Short v. Warden, 130 N.Y.S. 698 (N.Y. App. Div. 1911) 13

People ex rel. United States Aluminium Printing Plate Co. v. Knight, 174 N.Y. 475 (1903) 7

People v. Adelstein, 195 N.Y.S. 2d 27 (N.Y. App. Div. 1959) 14, 17

People v. Ashworth, 222 N.Y.S. 24 (N.Y. App. Div. 1927) 15

People v. Barondess, 16 N.Y.S. 436 (N.Y. Sup. Ct. 1891), *rev'd*, 31 N.E. 240 (N.Y. Ct. App. 1892) 13

People v. Barondess, 31 N.E. 240 (N.Y. Ct. App. 1892) 13

People v. Cadman, 57 Cal. 562 (1881) 13

People v. Cuddihy, 271 N.Y.S. 450 (N.Y. Sup. Ct. 1934), *aff'd*, 277 N.Y.S. 960 (N.Y. App. Div. 1935) .. 13, 17

People v. Ginsberg, 262 N.Y. 556 (1933) 16, 17

People v. Kaplan, 240 A.D. 72 (N.Y. App. Div.), *aff'd*, 264 N.Y. 675 (1934) 16, 17

TABLE OF AUTHORITIES – Continued

Page

People v. Learman, 28 N.Y.S. 2d 360 (N.Y. App. Div. 1941) 15

People v. Scotti, 266 N.Y. 480 (1934) 16, 17

People v. Spatarella, 34 N.Y. 2d 157 (1974) 14

People v. Squillante, 185 N.Y.S. 2d 357 (N.Y. Spec. Term 1959), *reviewed by*, 195 N.Y.S. 2d 96 (N.Y. App. Div. 1959) 14, 17

People v. Weil, 273 N.Y. 653 (1937) 17

People v. Weisbard, 248 N.Y.S. 399 (City Mag. Ct. 1931) 15

Rotella v. Wood, 528 U.S. 549 (2000) 22

Ruckelshaus v. Monsanto Co., 467 U.S. 986 (1984) 6, 7

Sedima, S. P. R. L. v. Imrex Co., 473 U.S. 479 (1985) 23

Solid Waste Agency of N. Cook County v. United States Army Corps of Eng'rs, 531 U.S. 159 (2001) 25

Trustees of Columbia College v. Lynch, 70 N.Y. 440 (1877) 4

United States v. Antico, 275 F.3d 245 (3d Cir. 2001) 18

United States v. Arena, 180 F.3d 380 (2d Cir. 1999) 4

United States v. Dinwiddie, 76 F.3d 913 (1996) 29

United States v. Turkette, 452 U.S. 576 (1981) 19

United States v. Virginia Elec. & Power Co., 365 U.S. 624 (1961) 5

Vaupel Textilmaschinen KG v. Meccanica Euro Italia S.P.A., 944 F.2d 870 (Fed. Cir. 1991) 5

TABLE OF AUTHORITIES – Continued

Page

STATUTES:

Cal. Corp. Code § 1800(b)(4) 24

Clayton Act § 16, 38 Stat. 737 26

Commissioners of the Code, Proposed Penal Code of the State of New York (1865):

§ 280 14

§ 584 14

§ 613 ..... 12, 14

Freedom of Access to Clinic Entrances Act of 1994, Pub. L. 103-259, 108 Stat. 694 (codified as amended at 18 U.S.C. § 248 (2000)) 28, 29

Hobbs Anti-Racketeering Act:

18 U.S.C. § 1951 ..... *passim*

N.Y. Bus. Corp. L. §§ 1101-1103 24

N.Y. Penal Law:

§ 530 (1909) 16

§ 552 (1881) 12, 15

§ 850 (1909) 12, 15, 16

§ 853 (1930) 17

§ 1290 (1909) 15

§ 2120 (1881) 15

Racketeer Influenced and Corrupt Organizations Act:

18 U.S.C. § 1962 ..... 19, 20, 22

18 U.S.C. § 1964 ..... *passim*

TABLE OF AUTHORITIES – Continued

Page

Sherman Act:

§ 4 ..... 26, 27

§ 7 27

MISCELLANEOUS:

American Law Institute, *Model Penal Code* Art. 223.0(5) (1985) 6

California Senate Office of Research, *Crimes Against Reproductive Rights in California*, May 2001 (Revised January 2002) *available at* http://www.sen.ca.gov/sor/Reprocrimes.htm 29

H.R. Rep. No. 1549, 91st Cong. 2d Sess. 2, *reprinted in* 1970 U.S.C.C.A.N. 4407, 4434 24

Restatement (First) of Property § 13 (1936) 6

Roger A. Cunningham *et al.*, *The Law of Property* (West, 1984) 4

The Freedom of Access to Clinic Entrances Act of 1993: Hearing Before the Senate Committee on Labor and Human Resources, 103d Cong. 10 (1993) 28

BRIEF FOR *AMICI CURIAE* IN SUPPORT OF RESPONDENTS

The States of California, New York, Connecticut, Maryland, Massachusetts, Montana, Nevada, Washington and West Virginia, through their Attorneys General, respectfully submit this brief as *amici curiae* urging affirmance of the decision below.

STATEMENT OF INTEREST OF *AMICI CURIAE*

Amici states have a strong interest in maintaining adequate legal protections and remedies against activities intended to compel their citizens, by actual or threatened force, to cede protected property. *Amici* include states where health care clinics have received demands to shut down their businesses or cease providing certain services and have either been targets of violent activities by anti-abortion extremists or received threats of such activities.

Application of the Hobbs Act to petitioners' conduct as a predicate for a RICO verdict, as well as the availability of permanent injunctive relief, meaningfully supplements the legal remedies available to state law enforcement officers, while respecting the proper balance between federal and state criminal jurisdiction.

SUMMARY OF ARGUMENT

1. The jury's finding that petitioners committed Hobbs Act extortion is a permissible one: petitioners sought to induce fear of violence and other unlawful harm and to leverage that fear to obtain respondent clinics' submission to demands that they shut down or, at least, cease providing abortion services.

In particular, the extraordinary degree of ongoing control petitioners sought satisfies the Hobbs Act requirement of "obtaining property": a person can "obtain property" by obtaining an ongoing power of control over another's assets that is equivalent to that held by a lawful property

owner. While the Hobbs Act should be construed to avoid application to ordinary trespass, violent crimes, and protest activities, the "obtaining property" requirement does not, as petitioners suggest, have to be interpreted to exclude all instances in which a perpetrator seeks to obtain non-possessory control over an asset. Instead, a rigorous application of the elements of Hobbs Act extortion, as well as First Amendment protections, should preclude application of the Hobbs Act except in cases of truly extortionate conduct.

2. Section 1964 of RICO authorizes district courts to issue permanent injunctions in RICO actions brought by private litigants, as well as in proceedings brought by the Attorney General.

The plain language of section 1964 dictates this result. Subsection 1964(a) authorizes district courts to enjoin violations of section 1962, and it contains no restrictions on the litigants who may seek permanent injunctions. Neither subsection 1964(b) nor subsection 1964(c), which authorize the Attorney General and private litigants to seek particular remedies, address the availability of permanent injunctions. In short, section 1964 contains no limitation on the litigants who may seek permanent injunctions.

The availability of private injunctions serves RICO's purposes and is consistent with the legislative history of section 1964. Comparison of RICO with the antitrust laws does not indicate that Congress intended to foreclose injunctions in private RICO actions. Finally, public policy considerations support availability of injunctions.

ARGUMENT

I. PETITIONERS COMMITTED HOBBS ACT EXTORTION

The Hobbs Act defines extortion as "the obtaining of property from another, with his consent, induced by wrongful use of actual or threatened force, violence, or fear." 18 U.S.C. § 1951(b)(2).

Here, the jury found that petitioners had committed 21 acts of Hobbs Act extortion, as predicates for a RICO violation. The verdict is a permissible application of the Hobbs Act: petitioners sought to place clinics nationwide in fear of violence and other unlawful harm by engaging in and encouraging physical assaults, vandalism, and other uses of force, and threatening similar conduct in the future (wrongful use of actual and threatened force, violence and fear), with the objective of using that fear to gain the clinics' submission (the victim's consent) and thereby obtain ongoing control over business operations, services and contractual relationships (obtaining property).

A. Petitioners Were Properly Found Liable For "Obtaining Property" As Defined In The Hobbs Act.

Petitioners' central objection to the jury's finding of Hobbs Act violations is that their conduct does not constitute "obtaining property." *Amici* agree that application of the "obtaining property" requirement of the Hobbs Act outside the paradigmatic extortion case – an extortionist's demand for money or tangible assets – poses difficult questions. And, in many cases where intangible assets, and intangible interests in those assets, are at stake, it may be that a perpetrator has not "obtain[ed] property" for purposes of the Hobbs Act. But, because of the extraordinary degree of ongoing control that petitioners sought to obtain over respondents' assets – petitioners demanded that respondent clinics shut down (or at least cease providing a service that is central to their business) – this is an appropriate case for such a finding.[1] As the Second Circuit

[1] By "ongoing" control, *amici* mean a control that endures beyond a person's immediate physical exercise of dominion over a thing. *Amici* develop this point at greater length *infra*, Point I.B., in discussing why trespassers and protestors ordinarily cannot be prosecuted for extortion.

has held, where a perpetrator seeks to "regulat[e] the fate" of a valuable asset, the perpetrator can be found to have attempted to "obtain[ ] property." *United States v. Arena*, 180 F.3d 380, 394 (2d Cir. 1999) (internal quotation marks, citation and ellipses omitted). This result accords with basic property law principles.

Property includes "rights to control and dispose" of a thing, *Crane v. Commissioner*, 331 U.S. 1, 6 (1947); *see generally* U.S. Br. at 15-21, such as rights of possession, rights of exclusion, rights of disposition, rights of use, rights to enjoy fruits or profits, and rights of destruction, *see, e.g.*, Roger A. Cunningham *et al.*, *The Law of Property* § 1.2, at 7 (West, 1984).

Of particular relevance here, the law recognizes as property many interests that confer only a right to veto uses, without permitting the holder to direct affirmative uses.[2] An obvious example is a negative easement on land. The holder does not have any affirmative rights of use, but does hold a right to "restrain[ ] the owner from doing that with, and upon, his property which, but for the . . . covenant, he might lawfully have done." *Trustees of Columbia College v. Lynch*, 70 N.Y. 440, 447 (1877). Negative

---

[2] Of course, this argument has no applicability to a regulatory takings claim. Although the regulation of property may restrict permissible uses, because "the property owner necessarily expects the use of his property to be restricted . . . by . . . legitimate exercises of [the states'] police powers," such regulation ordinarily does not effect a taking of property within the meaning of the Fifth Amendment. *Lucas v. South Carolina Coastal Council*, 505 U.S. 1003, 1027 (1992); *see, e.g.*, *Goldblatt v. Hempstead*, 369 U.S. 590, 592-96 (1962) (holding that ordinance effectively prohibiting continuation of pre-existing business was not a taking); *Hadacheck v. Sebastian*, 239 U.S. 394, 410-11 (1915) (holding that ordinance prohibiting continuation of brick-making operation was not a taking); *Mugler v. Kansas*, 123 U.S. 623, 668-69 (1887) (holding that prohibition upon use of building as a brewery was not a taking).

easements are merely illustrative of veto rights as an important category of property interests.[3]

Veto rights and other rights of control are "obtained" when a grantee obtains the claim to control that is the essence of the right: when an easement is transferred, the grantee obtains rights of control, for example, a right to cross land or demand that the servient landowner maintain a road, or, in the case of a negative easement, the right to veto disfavored uses of land; similarly, when shares in a business are transferred, the grantee obtains rights of control, such as voting rights or a right to demand a share of profits.

Here, if petitioners had purchased a negative easement prohibiting the use of the respondent's land or buildings for the performance of abortions, there could be no question that they had "obtain[ed] property."[4] The extra-legal power of control that petitioners in fact sought was not different from the power of control afforded by an easement in any relevant sense. To be sure, here, petitioners obtained no right that, like the rights afforded by an easement, could be enforced in court. But, of course, legal enforceability cannot be the test for whether an extortionist has "obtain[ed] property."[5]

---

[3] *See, e.g., Vaupel Textilmaschinen KG v. Meccanica Euro Italia S.P.A.*, 944 F.2d 870, 875 (Fed. Cir. 1991) (recognizing that a patentee, although he assigned "all substantial rights" in a patent, nonetheless retained a veto right on sublicensing) (emphasis omitted); *United States v. Virginia Elec. & Power Co.*, 365 U.S. 624, 630 (1961) (concluding that an easement holder, although having no possessory rights, had an "exclusive and perpetual property right to destroy" "the highest and best use of the servient land").

[4] *See, e.g., Equitable Life Assurance Soc'y v. Brennan*, 148 N.Y. 661, 665-66 (1896) (involving covenant not to operate "any trade, business or employment which shall be dangerous or noxious or constitute a nuisance" on servient land).

[5] The extra-legal control that an extortionist obtains, unlike that of a lawful property right, is enforced by resort to (and recognized by his

(Continued on following page)

Petitioners counter that "obtaining property," as defined in the Hobbs Act, requires an "acquisition or transfer *of some item* of 'property' from the owner to someone else." Scheidler Br. at 14 (emphasis added; emphasis in original deleted). Petitioners' construction, however, leaves no room for most ordinary usages of the phrase "obtaining property," which involve no transfer of possession of any thing. Petitioners' implicit use of the "vulgar and untechnical sense" of property as a "thing," *Ruckelshaus v. Monsanto Co.*, 467 U.S. 986, 1003 (1984) (internal quotation marks and citations omitted), is indefensibly narrow. Only when "property" is "employed in a more accurate sense to denote the group of rights" a person may have in a "thing," *id.* (internal quotation marks and citations omitted), can one account for most ordinary usages of the phrase "obtaining property."[6]

Petitioners also argue that the interests at stake here are not covered by the Hobbs Act because they constitute mere "intangible rights," and they argue that, in *McNally v. United States*, 483 U.S. 350 (1987), this Court held that such rights were not property. *See* Scheidler Br. at 16-17; OR Br. at 40-42. *McNally*, though, merely held, for purposes of mail fraud, that the "intangible right of the citizenry to good government" does not constitute property. *Id.* at 356. As this Court subsequently explained in *Carpenter v. United States*, "*McNally* did not limit the scope of

---

victim because of) the harm that the extortionist threatens, *see* 18 U.S.C. § 1951(b)(2) (defining as extortion the obtaining of property with the victim's consent, induced by fear), rather than by legal sanctions.

[6] Legal commentary holds that a transfer of "property" requires only the transfer of an *interest* in a thing. Thus, the First Restatement of Property defines "transfer" of property as "the extinguishment of . . . interests [in a thing] existing in one person and the creation of such interests in another person." *Restatement (First) of Property* § 13 (1936). Likewise, the Model Penal Code provides that, "in relation to property," "'obtain' means . . . to bring about a transfer . . . of a legal interest in the property, whether to the obtainer or another." American Law Institute, *Model Penal Code* Art. 223.0(5) (1985).

[mail fraud] to tangible as distinguished from intangible property rights." 484 U.S. 19, 25 (1987).[7] At most, the Court explained, *McNally* recognized that interests such as a citizen's asserted "rights to honest and impartial government" are "too ethereal" to constitute "property." *Id.*

The interests at issue in this case cannot be dismissed as "too ethereal" to constitute property. Petitioners sought ongoing control over interests that have traditionally been protected as property, in particular, the use of real estate, *Penn Central Transportation Co. v. New York City*, 438 U.S. 104, 127 (1978) (recognizing that a use restriction on real estate may constitute a taking of property); and a business' interest in continued operations, *see People ex rel. United States Aluminium Printing Plate Co. v. Knight*, 174 N.Y. 475, 484 (1903) (holding that a business' "right to exist and carry on its business" is "intangible property").

B. Mere Trespassory Interferences With Property Rights And Protest Activities Do Not Amount To Extortion.

Petitioners and their supporting *amici* contend that respondents' position would "turn the Hobbs Act into a device for federalizing such traditional state offenses as trespass, vandalism, and obstruction of public passage," OR Br. at 48; *see also* Scheidler Br. at 33, and would chill legitimate protest activities. *See* Scheidler Br. at 35; OR Br. at 46-47.

Amici share the concern that the Hobbs Act not be extended beyond its proper reach to cover such activities. But the answer is not to limit the definition of "obtaining

---

[7] The proposition that property rights "extend[ ] beyond land and tangible goods" is well-established. *Ruckelshaus*, 467 U.S. at 1003. The *Carpenter* Court expressly relied on that proposition in holding that a newspaper's interest in the pre-publication confidentiality of an advice column was a "property right." 484 U.S. at 25.

property" to obtaining physical possession of a thing. The answer is to recognize and apply a number of limitations that follow naturally from the text of the Hobbs Act and from the protections of the First Amendment.[8]

1. Mere Acts Of Trespass Or Violence Do Not Constitute Extortion.

Trespass or violence that interferes with the enjoyment of property, without more, does not meet the requirements of the Hobbs Act. First, the mere trespasser does not "obtain[ ]" property. To "obtain[ ] property," one must gain that which property rights confer. Unlike the mere trespasser, the extortionist must gain a power to control that is analogous to legally enforceable property rights – that is, a power of control that, like an enforceable property right, endures beyond a person's immediate physical exercise of dominion over a thing and permits the extortionist to dictate significant decisions about the disposal of an asset.

The mere trespasser gains no ongoing control over the landowner's property; instead, the trespasser gains a temporary enjoyment of the property that lasts only as long as the trespasser remains on the land and resists removal. This holds true even if the trespasser uses force: at most, the force may have an immediate impact (physical dominion over or destruction or harm to a thing), but it does not confer any ongoing control over the landowner's property. Just as an individual who obtains permission to

---

[8] By virtue of this Court's decision in *Enmons v. United States*, the Hobbs Act poses no threat to concerted activity by labor unions and their members, so long as they seek legitimate labor objectives. *See* 410 U.S. 396, 400 (1973) (holding that Hobbs Act prohibition on "wrongful" use of actual or threatened force, violence or fear does not apply to union agents who seek "legitimate union objectives, such as higher wages in return for genuine services"). This case in no way questions the legitimacy or impact of *Enmons* in the labor context.

cross land on isolated instances does not have an easement, the trespasser who, on isolated occasions, interferes with a property owner's use of an asset cannot credibly be alleged to have "obtain[ed]" the extra-legal equivalent of a property right.

Petitioners, by comparison, do not fall within this safe harbor because they sought a power of ongoing control and the control they sought – veto power over respondents' performance of abortions – is effectively indistinguishable from the power of control that they would have obtained had they purchased an easement on respondents' land and buildings.

Second, a trespasser, as distinguished from an extortionist, also does not accomplish anything "with [the victim's] consent, induced by wrongful use of actual or threatened force, violence, or fear." This element of a Hobbs Act violation is appropriately understood as requiring that the extortionist use fear of future unlawful harm to gain the submission (unwilling consent) of the victim, thereby gaining the ability to exercise a proprietary claim with a reasonable expectation that it will not be interfered with by the victim. Because the mere trespasser interferes with the owner's enjoyment of property rights directly, by physically occupying buildings or land, not by putting the victim in fear and gaining the victim's submission, he does not meet this requirement.[9]

The means petitioners employed to achieve their objectives – use of threats of force to enforce a claim to ongoing control over the clinics – distinguish their conduct from mere trespass, violence, and vandalism, and make

---

[9] This is so even if the trespasser engages in violence in furtherance of the trespass: the trespasser's power to occupy a building lasts only so long as the trespasser is present and physically resists removal; the violent trespasser ordinarily does not seek to induce the target's fear and submission with the objective of being able to exercise control after he departs.

appropriate a finding that they sought to obtain property "with [the victim's] consent, induced by wrongful use of actual or threatened force, violence, or fear." They engaged in trespass and they used force. But, more than that, they sought to leverage fear of future force to obtain the clinics' submission, and thus, ultimately, obtain proprietary control over clinics' businesses.

2. The Hobbs Act Cannot Be Applied To Chill Protest Activities.

Contrary to petitioners' arguments, the Hobbs Act cannot be applied to protest activities, both because such actions do not satisfy the elements of the Hobbs Act and because the First Amendment protects this conduct.

a. The Hobbs Act certainly does not reach protestors who "depend . . . on the persuasive force of the idea" that they are communicating, *Debartolo Corp. v. Fla. Gulf Coast Building & Constr. Trades Council*, 485 U.S. 568, 580 (1988) (internal citation and quotation marks omitted), to apply pressure to their target through public disapproval or embarrassment. *Cf.* Br. of Amicus PETA at 2 (noting that PETA supporters engage in protests "to call public attention" to objectionable practices).

Such protestors do not "obtain[ ] property" because property rights provide no guarantee against losses caused by public disapproval. *See Debartolo*, 485 U.S. at 580 (holding that a business that responds to a boycott is "doing no more than what its customers honestly want it to do"). Nor does the application of pressure through protest amount to "induc[ing]" another's "consent . . . by wrongful use of actual or threatened force, violence, or fear." Public opinion is not force or violence. And, pressuring someone to change their conduct to conform to the expectations of others, by threatening public disapproval, is not a "wrongful" use of "fear." *See id.* (holding that customers who boycott a business in response to the message of protestors are responding to "mere

persuasion," and the pressure applied by changes in customer conduct is an ordinary component of business).

The Hobbs Act should be inapplicable even in the vast majority of instances in which protest activities are marred by peripheral violence (*e.g.*, picket line altercations) or disruptive activities (*e.g.*, occupation of buildings). The Hobbs Act requires that the perpetrator "obtain[ ] property" and do so by a particular means: "with [the victim's] consent, induced by wrongful use of actual or threatened force, violence, or fear." This language indicates that a nexus between the extortionist's objective and means is required, a nexus that is typically not present in such cases. Peripheral violence and disruptive activities occurring in connection with a protest are generally not calculated to and directly intended to obtain ongoing control akin to a property right.

Petitioners' conduct, by comparison to legitimate protest activities, is properly actionable as a Hobbs Act violation. Rather than seeking change through influencing public opinion, and relying upon the pressure that accompanies public disapproval, petitioners attempted to place the clinics, their staffs, and their patients in fear of future force and violence. And they sought, by means of such fear, to obtain the submission of the clinics and, thereby, an ongoing veto power over the performance of abortions. Petitioners' conduct falls within the ambit of the Hobbs Act; ordinary protest activities do not.

b. Not only are protest activities ordinarily outside the scope of the Hobbs Act itself, but the First Amendment independently forecloses its application to attempts by protestors, through speech, to pressure a target to conform his conduct to public opinion. *See NAACP v. Claiborne Hardware Co.*, 458 U.S. 886, 888 & 915 (1982) (holding that the First Amendment bars liability against boycott organizers, who sought to achieve their objectives by "persuasive rhetoric . . . and a host of voluntary decisions by free citizens"). Moreover, even where violence and other non-protected activity occurs, for a particular protestor to be held liable, the First Amendment demands proof that

the protestor "specifically intend[s] to accomplish [his objectives] by resort to violence" or other unprotected activity, rather than through speech. *Id.* at 919 (internal citations and quotation marks omitted).

In this case, the Seventh Circuit reviewed the record and, while recognizing that petitioners did engage in some protected conduct, concluded that there was ample evidence that petitioners intended to accomplish their objectives by resort to force and that the jury verdict was based on petitioners' unprotected use of force to achieve their objectives. 267 F.3d 687, 700-705 (7th Cir. 2001). Consequently, the Court determined that the verdict did not offend First Amendment principles. *Id.* That determination is not before this Court, and First Amendment protections remain an important check on the scope of the Hobbs Act in cases where protestors do not intend to accomplish their objectives by resort to force.

C. The New York Antecedents To The Hobbs Act Support Its Application To Petitioners' Conduct.

Petitioners contend that the meaning of the phrase "obtaining property," as used in the New York antecedents of the Hobbs Act – the 1865 "Field Code"[10] and the Penal Laws adopted by New York in 1881 and 1909 – precludes application of the Hobbs Act to their conduct. *See* Scheidler Br. at 18-24. These early New York Codes, like the Hobbs Act, prohibited specified uses of threats to "obtain[ ] property,"[11] and they are recognized as a model for the Hobbs Act. *See Evans v. United States*, 504 U.S.

---

[10] Commissioners of the Code, *Proposed Model Penal Code of the State of New York* (1865) ("Field Code").

[11] *See* Field Code § 613; N.Y. Penal Law § 552 (1881); N.Y. Penal Law § 850 (1909).

255, 261-62 n.9 (1992). But, petitioners' characterization of them as exceedingly narrow is baseless.

1. The Term "Property," As Used In The New York Antecedents, Was Read Broadly, Not Narrowly.

New York courts applying the state law antecedents to the Hobbs Act have set forth a broad understanding of the type of "property" that may be the subject of extortion. *See, e.g., People v. Barondess*, 31 N.E. 240, 241 (N.Y. Ct. App. 1892) (adopting the dissenting opinion of Daniels, J., in *People v. Barondess*, 16 N.Y.S. 436, 444 (N.Y. Sup. Ct. 1891), which concluded that, for purposes of extortion under the New York Penal Law, "property" was intended "in its broad and unrestricted sense," and, consequently, injury to a business amounts to injury to "property"); *People v. Cuddihy*, 271 N.Y.S. 450, 453 (N.Y. Sup. Ct. 1934) (holding that, for purposes of extortion, "property" includes "the right to labor"), *aff'd*, 277 N.Y.S. 960 (N.Y. App. Div. 1935); *People ex rel. Short v. Warden*, 130 N.Y.S. 698, 700 (N.Y. App. Div. 1911) (holding that, for purposes of extortion, "'property' . . . is intended to embrace every species of valuable right and interest," and, consequently, "labor constitutes property") *aff'd*, 206 N.Y. 632 (1912).[12]

In the absence of any narrowing definition of "property" in codes or caselaw dealing with *extortion*,[13]

---

[12] Confirming this broad interpretation of "property," the California Supreme Court, applying the Field Code formulation of extortion, held that a litigant's intangible right to appeal "is property" and that "a threat made for the purpose of inducing an appellant to dismiss an appeal is a threat made with intent to extort property from another." *People v. Cadman*, 57 Cal. 562, 564 (1881).

[13] As petitioners note, *Barondess*, *Cuddihy*, and *Short* address the meaning of "property" for purposes of defining harms to property that satisfy the "threat" element of extortion rather than in defining the "obtaining property" requirement, and as purported evidence that

(Continued on following page)

petitioners rely on the definitions of property used in the New York antecedents to define the crimes of *larceny* and *robbery*. *See* Scheidler Br. at 19-20 nn.13-14. Comparison to these larceny and robbery provisions, however, undermines, rather than supports, petitioners' position.

The commentary to the Field Code warns that the crimes of robbery, larceny and extortion "require to be . . . distinguished." Field Code § 584 cmt. And, in its operative provisions, the Field Code draws a clear distinction between the kinds of property that are the subject of extortion and the property that may be the subject of robbery and larceny. The Field Code provides that extortion extends to the obtaining of "property." Field Code § 613. By contrast, the Field Code explicitly limits the property interests that may be the subject of larceny or burglary to "*personal* property." *Id.* §§ 280 (robbery), 584 (larceny) (emphasis added). This explicit statutory distinction has dual significance. First, when the Commissioners of the Code intended to limit the forms of property that were to be the subject of a crime, they knew how, but they did not do so in defining extortion. Second, petitioners contend that case law cited in the Field Code as defining the limits of the property interests that may be the subject of *larceny* also define the limits of property for purposes of the crime of extortion. *See* Scheidler Br. at 19-20, 25 & nn.13-14.

"property" had a narrower meaning for the latter purpose they cite *People v. Squillante*, 185 N.Y.S.2d 357 (N.Y. Spec. Term 1959), *reviewed by*, 195 N.Y.S.2d 96 (N.Y. App. Div. 1959) (dismissing indictment on different grounds), *and reviewed sub nom People v. Adelstein*, 195 N.Y.S.2d 27 (N.Y. App. Div. 1959) (same). *See* Scheidler Br. at 22-23 n.16. For a full answer to this argument, *see* U.S. Br. at 18 (noting absence of evidence of such inconsistent use and further noting that the proposition for which petitioners cite *Squillante* was rejected by New York's highest court in *People v. Spatarella*, 34 N.Y.2d 157, 162 (1974) (holding that "[w]e are not disposed to construe the term ['property'] differently in defining the sort of property that can be demanded" than in "defining the kind of property which can be threatened")).

But, the Field Code, establishing that extortion applies to all "property" while larceny applies only to "personal property," renders the analogy inapt.

Petitioners draw similarly misplaced conclusions from the Penal Laws adopted by New York in 1881 and 1909. As with the Field Code, those codes explicitly distinguish between the property that may be the subject of extortion and the property that may be the subject of larceny or robbery. Compare N.Y. Penal Code § 552 (1881) (providing that extortion involves the obtaining of "property"); *id.* § 850 (1909) (same), with N.Y. Penal Code § 1290 (1909) (defining the property protected more narrowly for purposes of larceny); *id.* § 2120 (1909) (same, for purposes of robbery). As in the Field Code, the Legislature indicated no limitation on the "property" protected by the prohibition on extortion. And, again, these statutory distinctions also undermine the probative value of caselaw interpreting Penal Law provisions relating to robbery or larceny. *Cf.* Scheidler Br. at 25, 26 (citing *People v. Weisbard*, 248 N.Y.S. 399 (City Mag. Ct. 1931) (interpretation of larceny provisions); *People v. Ashworth*, 222 N.Y.S. 24 (N.Y. App. Div. 1927) (same).[14]

---

[14] Petitioners also cite *People v. Learman*, 28 N.Y.S.2d 360 (N.Y. App. Div. 1941), in support of the argument that rights that are not transferable cannot be "property." But, the holding of *Learman* was merely that a driver's license is a "privilege which might be denied" its holder, and so could not be considered property. *Id.* at 365 (internal quotation marks and citation omitted). In this context, the court's further observation that the non-assignability of a driver's license confirms that it is not property suggests only that non-assignability is an important factor in determining whether a *license* is property, rather than a mere "privilege." It does not follow that non-alienable rights (*e.g.*, non-alienable rights to a trust fund, personal easement rights, or rights to one's own body) can never be property.

2. The Prohibition On Coercion Under New York Law Does Not Aid Petitioners.

Petitioners suggest that the existence of the two different crimes of extortion and coercion – extortion applied to the use of threats to "obtain[ ] property," and coercion applied to the use of threats "to compel another person to do or to abstain from doing an act which such other person has a legal right to do or to abstain from doing," N.Y. Penal Law § 850 (1909) (extortion); *id.* § 530 (coercion) – demonstrates a clear distinction in the law between "property" interests and "autonomy" interests. Scheidler Br. at 23-24; OR Br. at 37-38. According to petitioners, New York caselaw demonstrates that threats against business interests involved autonomy interests only and were exclusively prosecuted as coercion, rather than as extortion. *See* Scheidler Br. at 27-28 (citing *People v. Ginsberg*, 262 N.Y. 556 (1933); *People v. Scotti*, 266 N.Y. 480 (1934); *People v. Weil*, 273 N.Y. 653 (1937); *People v. Kaplan*, 240 A.D. 72 (N.Y. App. Div.), *aff'd*, 264 N.Y. 675 (1934)).

The relationship of criminal coercion to extortion is more complex than petitioners would have it, and does not suggest any clear line dividing "obtaining property" and restraining liberty. Although coercion may have a broader reach, there also necessarily is overlap between the property interests protected by prohibitions on extortion and liberty interests protected by prohibitions on coercion: indeed, one who commits extortion ordinarily also commits coercion.[15]

---

[15] The plain text of the prohibitions on extortion and coercion demonstrate that most, if not all, conduct that could support a charge of extortion also could be prosecuted as coercion: if a perpetrator compels a victim to cede property rights, he also necessarily will compel the victim "to do . . . an act which such other person has a legal right . . . to abstain from doing."

Given the overlap, a decision to prosecute conduct as coercion rather than extortion may simply reflect the exercise of prosecutorial leniency. *Ginsberg* and *Kaplan* are best understood in this light, rather than as illustrations of any allegedly narrow scope of the "obtaining property" requirement for extortion.[16] And even if a prosecutor's decision was based on a belief that the crime could not be prosecuted as extortion, that judgment might well have had nothing to do with any narrow understanding of what interests constitute property. Thus, in *Scotti* and *Weil*, other obvious legal deficiencies would have prevented the defendants' prosecution for extortion.[17]

---

[16] In *Ginsberg*, the defendants likely could have been prosecuted for extortion, even under petitioners' narrow view of the crime: defendants threatened to cause physical damage to the victim's store; their demand was that the victim join their trade association, which, presumably, included a demand that he pay fees. 262 N.Y. at 556. And, in *Kaplan*, members of one rival union faction were accused of using violence and other threats to compel another faction to dismiss lawsuits. 240 A.D. at 74-75. The reason the case was prosecuted as coercion rather than extortion clearly is *not* that compelling another to dismiss a civil action could not be prosecuted as extortion: the question whether a cause of action constituted "property" was irrelevant to the case, because the then-applicable Penal Law clearly provided that the use of threats to compel another to file voluntary dismissal papers in court constituted extortion. *See* N.Y. Penal Law § 853 (1930) (providing that extortion includes the use of threats to compel another to "make . . . any . . . instrument in writing affecting or intended to affect any cause of action or defense").

[17] In both cases, labor union officers were prosecuted for making threats in support of collective bargaining demands. *Scotti*, 266 N.Y. at 480; *Weil*, 273 N.Y. at 654. It was well-established at the time that union officers who made demands on employers could be prosecuted for extortion only if they sought *personal* financial gain, not if they sought legitimate labor objectives. This principle was derived from the requirement of an intent "to obtain that which in justice and equity the party is not entitled to receive." *Cuddihy*, *supra*, 271 N.Y.S. at 453; *accord Adelstein*, *supra*, 195 N.Y.S.2d at 28 (reviewing *Squillante*, *supra*, 185 N.Y.S.2d 357).

D. The Hobbs Act Cannot Be Applied To Misuses Of Governmental Regulatory Power, Unless Government Officials Seek Personal Gain.

Finally, *Amici* Alabama *et al.* (Alabama) argue that, unless the "obtaining property" element of the Hobbs Act is narrowly construed, government officials may be subject to charges of extortion for misconduct in connection with regulatory decisions. Br. of *Amici* Alabama et al. at 10-12. The premise underlying Alabama's concern appears to be that government officials, in regulating property, exercise control over private property, and that improper exercises of control will trigger a finding that the government official "obtained property." *Id.*

There is no such danger. To be sure, if a governmental official exercises governmental power to instill fear and thereby obtain some *personal* gain, the official may be guilty of Hobbs Act extortion. *See United States v. Antico*, 275 F.3d 245 (3d Cir. 2001) (upholding Hobbs Act conviction of city official who utilized the threat of withheld licenses to obtain, *inter alia*, a partnership interest in and personal control over nude dancing establishments). But where an official merely implements regulatory controls, without seeking personal gain, he or she does not "obtain property," because the assertion of regulatory control over property does not confer a "property" interest upon the government actor.

Thus, in *Cleveland v. United States*, 531 U.S. 12 (2000), this Court addressed a claim that fraud by a private party in obtaining a license from a state deprives the state of "property." The Court held that it did not, concluding that a state's right of control over licenses is not a "property" right. *Id.* at 23. It reasoned that the state, in exercising its police powers to control licenses, is acting in its role as sovereign. *Id.* Significantly, it concluded that a sovereign's exercise of its police powers to control property does not implicate any "property" interest of the sovereign. *Id.* at 20-24.

Of course, Alabama's concern appears to be that officials who *misuse* regulatory power will be subject to allegations that they "obtained property" for purposes of the Hobbs Act. But nowhere does *Cleveland* suggest that even if the state had been wrongfully withholding a license from the defendant – *e.g.*, withholding the license in derogation of statutory requirements for its issuance – the state's interest would be converted to a property, as opposed to a regulatory, interest. On the contrary, the absence of a property interest in *Cleveland* flowed from the fundamental distinction between the kind of control exercised by a sovereign in regulating property and the control afforded by property rights. *Id.*

II. RICO AUTHORIZES PERMANENT INJUNCTIONS IN PRIVATE RICO ACTIONS

A. Private Injunctions Are Available Under A Plain Reading Of 18 U.S.C. § 1964.

As this Court has instructed, "[i]n determining the scope of a statute, we look first to its language. If the statutory language is unambiguous, in the absence of 'a clearly expressed legislative intent to the contrary, that language must ordinarily be regarded as conclusive.'" *United States v. Turkette,* 452 U.S. 576, 580 (1981) (quoting *Consumer Product Safety Comm'n v. GTE Sylvania Inc.,* 447 U.S. 102, 108 (1980)). In this case, the plain language of section 1964 unambiguously provides for permanent injunctions in RICO actions brought by private parties.[18]

---

[18] Section 1962 of RICO establishes the elements of a RICO violation, for which section 1964, entitled "Civil remedies," provides, in pertinent part, as follows:

> (a) The district courts of the United States shall have jurisdiction to prevent and restrain violations of section 1962 of this chapter by issuing appropriate orders, including, but

(Continued on following page)

Looking first at the text of subsection 1964(a), which authorizes a district court to grant permanent injunctions, that subsection is most naturally read to authorize such relief in all actions brought to remedy violations under section 1962. Nothing in the text of subsection 1964(a) limits such relief to an action brought under subsection 1964(b) or subsection 1964(c). The only textual limitations on the district court's authority to award an injunction are that a "violation[ ] of section 1962" has to be established and the injunction must be "appropriate." A violation of section 1962 can be established in either a proceeding under subsection 1964(b) or an action under subsection 1964(c), and the statute nowhere indicates that injunctions would be "appropriate" in one type of action but not the other.

Nor do subsections 1964(b) and 1964(c) limit the parties who may seek injunctions. Subsection 1964(b)

---

not limited to: ordering any person to divest himself of any interest, direct or indirect, in any enterprise; imposing reasonable restrictions on the future activities or investments of any person, including, but not limited to, prohibiting any person from engaging in the same type of endeavor as the enterprise engaged in, the activities of which affect interstate or foreign commerce; or ordering dissolution or reorganization of any enterprise, making due provision for the rights of innocent persons.

(b) The Attorney General may institute proceedings under this section. Pending final determination thereof, the court may at any time enter such restraining orders or prohibitions, or take such other actions, including the acceptance of satisfactory performance bonds, as it shall deem proper.

(c) Any person injured in his business or property by reason of a violation of section 1962 of this chapter may sue therefor in any appropriate United States district court and shall recover threefold the damages he sustains and the cost of the suit, including a reasonable attorney's fee. . . .

18 U.S.C. § 1964(a)-(c).

provides that the Attorney General may seek an injunction "[p]ending final determination," and subsection 1964(c) provides that private litigants may seek treble damages. But, the mention of these two distinct types of remedies has no bearing on the question of availability of permanent injunctions.[19]

With respect to permanent injunctions, then, both the Attorney General and private litigants stand in precisely the same position. Subsection 1964(b) does not authorize the Attorney General to obtain such relief, nor does subsection 1964(c) authorize private litigants to obtain such relief. Both must look to subsection 1964(a) for authority to seek such relief.

The Government, contending that the Attorney General is the sole litigant who may seek permanent injunctions, argues that the Attorney General stands in a special relationship to the injunctive relief authorized by subsection 1964(a) because "Section 1964(b) expressly grants the Attorney General the right to bring actions under 'this section,' an obvious cross-reference to the court's power to award injunctive relief under Section 1964(a)," whereas "Section 1964(c) . . . is a free-standing, self-contained grant of a private right to recover treble-damages." U.S. Br. at 8.

This argument is without merit. Subsection 1964(b)'s identification of the Attorney General's proceeding as one

---

[19] At most, one might be able to conclude, by implication from these specific mentions of relief, that Congress intended that *preliminary* injunctive relief should be exclusively the province of the Attorney General and that treble damages should be the exclusive province of private litigants. But, neither the mention of preliminary injunctive relief in subsection 1964(b) nor the mention of treble damages in subsection 1964(c) can be read to imply that those are the *only* forms of relief available, respectively, to the Attorney General and to private litigants. Such an interpretation would result in the absurd consequence that the Attorney General could only seek *preliminary* relief.

"under this section" is not "an obvious cross-reference to . . . [sub]section 1964(a)" – instead, it is an obvious reference to section 1964, *generally*. As such, the identification of the Attorney General's proceeding as one "under this section" in no way differentiates it from a private litigant's cause of action, brought under the authority of subsection 1964(c). Obviously, *both* are actions "under this section," that is, under section 1964. If the fact that a proceeding is one "under" section 1964 suffices to establish entitlement to permanent injunctions, that logic extends to private litigants as well as the Attorney General.

B. The Availability Of Private Injunctions Serves The Purposes Of RICO.

Congress intended that victims would be able to obtain compensation for racketeering activities. As this Court noted, Congress in enacting RICO also intended to "encourag[e] civil litigation to supplement Government efforts to deter and penalize the . . . prohibited practices." *Rotella v. Wood,* 528 U.S. 549, 557 (2000). "The object of civil RICO is . . . not merely to compensate victims but to turn them into prosecutors, 'private attorneys general,' dedicated to eliminating racketeering activity." *Id.* (internal citation omitted).

The availability of permanent injunctions in private actions is essential to effectuate Congress' intent both to empower victims to redress racketeering injuries and to enable private litigants to act as "private attorneys general." RICO targets perpetrators who engage in patterns of racketeering activity, with objectives that are long-term: controlling and participating in the conduct of enterprises. *See* 18 U.S.C. § 1962. Persons injured in their business or property by such perpetrators cannot obtain adequate

redress, or act as private attorneys general, unless they can obtain permanent injunctions.[20]

Consider, for example, a case in which organized crime figures attempt to control a legitimate corporation through a pattern of racketeering activity – a paradigmatic RICO case. Under petitioners' construction of § 1964, without the intervention of the Attorney General, the legitimate directors of the corporation would be unable to obtain an injunction to prevent illegitimate directors from acting on behalf of the corporation, to reverse corporate restructurings effected by the racketeers, or to gain control of corporate assets wrongfully transferred.

The present case also powerfully illustrates the effect that petitioners' construction would have on Congress' remedial scheme. The petitioners' stated objective was to eliminate the provision of abortion services. The petitioners' extortionate conduct was ongoing: on a continuing basis, they sought to leverage the fear that their "rescue" operations had instilled to make demands on abortion clinics. Under petitioners' construction of § 1964, their victims would not be able to enjoin their continuing use of illegal threats and demands, subverting the purposes of RICO.[21]

---

[20] Requiring parties to repeatedly sue for damages for each successive act does not ensure the cessation of such activity and is a waste of judicial and party resources, just as the limitations on civil RICO actions this Court rejected in *Sedima* would have created a "wasteful splitting of actions." *See*, *Sedima, S. P. R. L. v. Imrex Co.*, 473 U.S. 479, 490 n.9 (1985).

[21] The Government suggests that permitting private parties to obtain injunctive relief under RICO "adversely affect[s]" the Government's ability to enforce RICO. U.S. Br. at 1. The Government cites, without explanation, conflicts over disgorgement remedies. *Id.* But, if the concern is with competing claims to limited funds, private parties' clear entitlement to treble damages would surely pose the greater danger. The Government also cites concerns about dissolution remedies. *Id.* at 14. But many laws permit private, as well as government, litigants to request such relief, *see*, *e.g.*, *California v. American Stores*

(Continued on following page)

C. The Legislative History Of § 1964 Is Consistent With Recognition Of Private Injunctive Relief.

To the extent it is instructive, the legislative history supports the availability of permanent injunctions in private RICO actions. In the House Report discussing § 1964, the sponsors of the bill explained: "Although certain remedies are set out, the list is not meant to be exhaustive, and the only limit on remedies is that they accomplish the aim set out of removing the corrupting influence and make due provision for the rights of innocent persons." H.R. Rep. No. 1549, 91st Cong. 2d Sess. 2, *reprinted in* 1970 U.S.C.C.A.N. 4407, 4434. This explanation confirms that RICO's drafters agreed with the common sense proposition discussed in the previous section – that litigants should be able to obtain all remedies necessary to "remov[e] the corrupting influence" of racketeering activities.

Petitioners, in arguing the contrary point, rely on isolated floor statements and withdrawn amendments. First, they note that, during the floor debate on the bill in the House, Representative Steiger, the House sponsor of the bill, introduced an amendment that would have, among other things, made private plaintiffs' right to seek an injunction explicit. OR Br. at 17. The amendment was withdrawn after another representative described it on the House floor as creating "an additional civil remedy." *Id.* Second, they note that one year after the bill's passage, Congress failed to pass a bill introduced in the Senate

---

Co., 495 U.S. 271, 275 (1990) (holding that private litigants may seek divestiture, and other similar relief under the federal antitrust laws); Cal. Corp. Code § 1800(b)(4); N.Y. Bus. Corp. L. §§ 1101-1103; and experience demonstrates that courts are capable of mediating between competing remedial claims of litigants and of identifying appropriate relief.

with the same language as the Steiger amendment. *See id.* n.16. From these two occurrences, they conclude Congress has manifest an intent not to authorize private injunctions under RICO. *Id.* at 18.

Neither floor statements nor withdrawn amendments are reliable sources of legislative intent.[22] In any event, these particular floor statements and withdrawn amendments do not provide the kind of "clearly expressed legislative intent to the contrary" that would obviate unambiguous statutory language. *National Organization for Women v. Scheidler*, 510 U.S. 249, 261 (1994) (internal citations and quotation marks omitted). In *Agency Holding Corp. v. Malley-Duff & Associates, Inc.*, 483 U.S. 143 (1987), this Court considered a claim that the withdrawal of the Steiger amendments – the very amendments that petitioners point to here – demonstrated that Congress was opposed to one of the provisions of those amendments, a uniform limitations period. This Court rejected the argument, noting that Congress did not reject the proposed amendment; rather, Representative Steiger voluntarily withdrew it for referral to the House Judiciary Committee for further study. *Id.* at 154-55. The Court declined to infer any hostility toward a uniform limitations period from Congress' failure to enact a predecessor bill to RICO that would have provided for a uniform statute of limitations, observing that there were other possible explanations for

---

[22] *See Barnhart v. Sigmon Coal Co.*, 534 U.S. 438, ___, 122 S.Ct. 941, 954 & n.15 (2002) (holding that floor statements of bill sponsors could not amend the clear language of a statute, and noting that representations made on the floor do not "garner[ ] the support of the House, Senate, and the President"); *Solid Waste Agency of N. Cook County v. United States Army Corps of Eng'rs*, 531 U.S. 159, 169-70 (2001) (warning that "[f]ailed legislative proposals are a particularly dangerous ground on which to rest an interpretation of a prior statute. A bill can be proposed for any number of reasons, and it can be rejected for just as many others."); *Central Bank of Denver, N.A. v. First Interstate Bank of Denver, N.A.*, 511 U.S. 164, 187 (1994) (same).

the bill's withdrawal. *Id.* at 155. Similarly, the withdrawal of the Steiger Amendments is not probative of Congress' intent with respect to the availability of equitable relief in private RICO actions.

D. Comparison With The Antitrust Laws Does Not Support The Contention That Congress Intended To Foreclose Injunctions In Private RICO Actions.

Petitioners and the Government contend that a comparison of the antitrust laws to RICO supports their position, arguing that, in enacting RICO, Congress "borrowed precisely the remedial language [from the antitrust laws] that this Court had held *not* to authorize private injunctive relief, and *declined* to borrow a separate provision of antitrust law expressly conferring private injunctive remedies." OR Br. at 11 (emphasis in original); *see* U.S. Br. at 9-12. The premise of this argument is incorrect.

It is true that, prior to enactment in 1914 of section 16 of the Clayton Act, 38 Stat. 737, this Court had held that the then-existing antitrust laws gave the Government the exclusive authority to seek injunctions. *See, e.g., Minnesota v. Northern Sec. Co.*, 194 U.S. 48, 70-71 (1904).[23] But, at that time, the only provision of the antitrust laws authorizing injunctions, section 4 of the Sherman Act, clearly identified a distinct role for the Government in seeking such relief:

> The several circuits of the United States are hereby invested with jurisdiction to prevent and restrain violations of this act; *and it shall be the duty of the several district attorneys of the United States . . . under the direction of the Attorney-General, to institute proceedings in*

[23] Under the antitrust laws as currently drafted, there is no question that private litigants may seek injunctive relief. *See American Stores*, 495 U.S. at 275.

> *equity to prevent and restrain such violations. . . .* [P]ending [a] petition and before final decree, the court may at any time make such temporary restraining order or prohibition as shall be deemed just in the premises.

26 Stat. 209-210 (1890) (emphasis added). Private actions were separately authorized by § 7 of the Sherman Act, and, in contradistinction to § 4's explicit reference to the Government's role in seeking injunctions, § 7 made no reference to injunctions. *Id.* at 210.

In holding that, for purposes of the antitrust laws, "Congress has prescribed a specific mode for preventing restraints upon [trade], namely, suits in equity under the direction of the Attorney General," *Minnesota v. Northern Sec. Co.*, 194 U.S. at 71, the Court relied on the fact that the Sherman Act identified a distinct role for the Government in seeking permanent injunctions. Section 4 of the Sherman Act made it the "*duty*" of the Attorney General "to institute proceedings in equity to prevent and restrain [antitrust] violations," and the Court interpreted this direction to mean that it is the *exclusive* duty, and province, of the Government to institute equity proceedings. *See id.* (interpreting Congress' direction that the Government has the duty to institute proceedings as indicating a congressional intent "to limit direct proceedings in equity to prevent and restrain [antitrust] violations . . . to those instituted in the name of the United States").

In enacting RICO, Congress did not carry over those aspects of Sherman Act §§ 4 and 7 that identified a *distinct* role for the Government in seeking permanent injunctions. To the contrary, as discussed above, in RICO Congress enacted a broad equity provision, § 1964(a), which contains no language that could be construed as limiting permanent injunctions to any particular litigant. And, in describing the types of actions that various litigants may bring, Congress chose not to describe the Government's (or any other litigant's) action as a "proceeding[ ] in equity to prevent and restrain . . . violations."

Indeed, neither subsection 1964(b) nor subsection 1964(c) makes any reference to permanent injunctions. In short, in contrast to the pre-1914 antitrust laws, § 1964 cannot be interpreted as defining an *exclusive* role for the Government in seeking permanent injunctions to restrain violations, because it does not even define any *distinct* role for the Government in this regard.

E. Public Policy Considerations Support The Availability Of Injunctions In Private Civil RICO Actions

Confronted with the nationwide scope of criminal conduct by anti-abortion extremists, including activities that were designed to overwhelm local law enforcement, then-Attorney General Janet Reno concluded that the problem caused by Operation Rescue and like groups "transcends the ability of any single local jurisdiction to address it." *The Freedom of Access to Clinic Entrances Act of 1993: Hearing Before the Senate Committee on Labor and Human Resources*, 103d Cong. 10 (1993) (May 12, 1993 Testimony of Attorney General Janet Reno at 4). Similarly, in adopting a Resolution urging passage of what became known as the Freedom of Access to Clinic Entrances Act of 1994 (FACE), the National Association of Attorneys General noted that, "since 1980 in the United States, over 400 bombings, arsons and acts of vandalism have been directed at family planning clinics." *Id.* at 163 (annex to statement of New York Attorney General Robert Abrams).[24]

---

[24] Ironically, petitioners' supporters argue that the legislative history of FACE supports their position. They argue that, if RICO and the Hobbs Act could be applied in the manner the courts here applied them, "FACE would have been unnecessary," and they cite a statement of then-Attorney General Reno, that no existing federal law "'would be generally applicable to private interference with a woman's right to choose'" as evidence that she did not believe the Hobbs Act could be

(Continued on following page)

The enactment of FACE has unquestionably aided efforts to control violent, extremist anti-abortion activities. But, FACE has not put an end to such activities.[25] Despite a string of locally-issued injunctions (*see, e.g.*, Life Legal Defense Foundation *amicus* brief at p. 13, n.15, listing California injunctions), Operation Rescue and other anti-abortion leaders are committed to pursue their objectives by illegal means. As one commentator has noted:

> [P]erhaps because anti-abortion protest leaders take a broad and long-term view of their organizations' objectives, the threat of FACE charges has not sufficiently deterred their illegal activities. Protestors continue to defy state and local criminal laws and reduce the effectiveness of injunctions by varying venues and spreading their actions among many individuals. Additionally, even in cases like [*United States v. Dinwiddie*, 76

---

applied to illegal activity by anti-abortion extremists. Alabama Br. at 18 (internal citation omitted). As an initial matter, as a result of the Seventh Circuit's earlier decision dismissing this action, there unquestionably was some doubt in 1993 whether RICO could be applied to any conduct by anti-abortion extremists. *See NOW v. Scheidler*, 968 F.2d 612, 614 (7th Cir. 1992) (dismissing this action on the ground that "RICO requires either an economically motivated enterprise or economically motivated predicate acts"), *rev'd*, 510 U.S. 249 (1994). But, more to the point, respondents' position, and the position laid out in this brief in support of respondents, is *not* that RICO and the Hobbs Act are "generally applicable to private interference with a woman's right to choose." Rather, it is that those laws are appropriately applied when, as here, anti-abortion extremists take the illegal approach of leveraging force and fear to demand the cessation of abortion services.

[25] *See, e.g.*, California Senate Office of Research, *Crimes Against Reproductive Rights in California*, May 2001 (Revised January 2002), p. 8 of 24 *available at* http://www.sen[illegible]v/sor/Reprocrimes.htm (cataloguing violent crimes against clinics by anti-abortion extremists, on the basis of an October 2000 California Senate Office of Research survey of 172 publicly identified abortion providers in California regarding incidents occurring between January 1, 1995 and late 2000).

> F.3d 913 (1996)], in which plaintiffs successfully obtain a permanent nationwide injunction for violations of FACE, the injunction applies only to protestors found at the clinics. RICO injunctions have teeth because they give courts an effective way to enjoin illegal protest planning. In effect, RICO relief extends beyond the clinic entrance.

Comment, 115 Harv. L. Rev. 1745, 1751 (2002) (citations omitted). As this analysis suggests, allowing private parties to seek civil injunctions conserves and supplements law enforcement resources and provides a meaningful remedy to victims of ongoing, organized violence, extortion, and other racketeering.

CONCLUSION

For the foregoing reasons, the judgment of the court of appeals should be affirmed.

Respectfully submitted,

BILL LOCKYER,
Attorney General of the State of California
MANUEL M. MEDEIROS
Solicitor General
RICHARD M. FRANK
Chief Assistant Attorney General
MARY E. HACKENBRACHT
Senior Assistant Attorney General
HELEN G. ARENS*
Deputy Attorney General

ELIOT SPITZER,
Attorney General of the State of New York
CAITLIN J. HALLIGAN
Solicitor General
DANIEL J. CHEPAITIS
Assistant Solicitor General

* *Counsel of Record*

(Additional Counsel Listed Inside Front Cover)

September 17, 2002

43 A30